INDEX

	Page
Opinions below	1
Jurisdiction	1
Statute involved	2
Question presented	2
Statement	3
Argument	6
Conclusion	10
Appendix	11

CITATIONS

Cases:

Aluminum Ore Co. v. *National Labor Relations Board*, 131 F. 2d 485	7, 9
Art Metals Const. Co. v. *National Labor Relations Board*, 110 F. 2d 148	8
Brooks v. *National Labor Relations Board*, 348 U.S. 96	9
J. I. Case Co. v. *National Labor Relations Board*, 321 U.S. 332	9
Electric Auto-Lite Co., 89 NLRB 1192	9
McQuay-Norris Mfg. Co. v. *National Labor Relations Board*, 116 F. 2d 748, certiorari denied, 313 U.S. 565	8
National Labor Relations Board v. *J. H. Allison & Co.*, 165 F. 2d 766, enforcing 70 NLRB 377, certiorari denied, 335 U.S. 814	6, 9
National Labor Relations Board v. *American National Insurance Co.*, 343 U.S. 395	8
National Labor Relations Board v. *Boston Herald-Traveler Corp.*, 210 F. 2d 134	7
National Labor Relations Board v. *Corsicana Cotton Mills*, 178 F. 2d 344	8
National Labor Relations Board v. *Hekman Furniture Co.*, 207 F. 2d 561, enforcing 101 NLRB 631	6, 9
National Labor Relations Board v. *Jacobs Mfg. Co.*, 196 F. 2d 680, enforcing 94 NLRB 1214	7, 8

Cases—Continued

Page

National Labor Relations Board v. *Leland-Gifford Co.*, 200 F. 2d 620 6

National Labor Relations Board v. *New Britain Machine Co.*, 210 F. 2d 61 7

National Labor Relations Board v. *Otis Elevator Co.*, 208 F. 2d 176 7

National Labor Relations Board v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947 6

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*), Sec. 8(a) 2

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 641

WHITIN MACHINE WORKS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (*infra*, pp. 11-14) is reported at 217 F. 2d 593. The findings of fact, conclusions of law, and order of the Board (B.A. 27-36),[1] are reported at 108 NLRB No. 223.

JURISDICTION

The decree of the court below was entered on December 8, 1954. The petition for a writ of certio-

---

[1] References designated "B.A." are to the Board's Appendix in the court below.

rari was filed on March 7, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and under Section 10(e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), read as follows:

> Sec. 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees * * *.
>
> * * * * *
>
> (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement * * *, but such obligation does not compel either party to agree to a proposal or require the making of a concession * * *.

QUESTION PRESENTED

Whether the Board properly found that petitioner had violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with infor-

mation as to the individual wage rates of the employees it represents.

STATEMENT

A. The Board's findings of fact

Following an election in which a majority of petitioner's production and maintenance employees designated the United Steelworkers of America, CIO, hereinafter called the Union, as their collective bargaining representative, the Board on June 19, 1952, certified the Union as the exclusive representative of these employees (B.A. 3). The Union and petitioner thereafter commenced a series of bargaining negotiations for a collective bargaining contract (B.A. 6-16; 38-48). In the course of these bargaining conferences which occurred at intervals between November 1952 and May 1953 the Union made repeated requests that petitioner furnish it with certain wage data; petitioner's refusal to furnish this data constitutes the unfair labor practice with which this case is concerned.

From the very first meetings on November 5, 10, and 18, it was apparent that the parties were in sharp disagreement over matters relating to wages, for the Union had proposed a wage increase which petitioner had rejected, stating that it was not financially able to grant an increase and that its wages were comparable to those paid by its competitors in the area (B.A. 6; 38-40). At the meeting of November 25, Starnes, the union representative, asked petitioner's manager, Grieb, to furnish the names, job classifications, pay rates,

and seniority positions of each employee in the unit (B.A. 6; 40). Petitioner replied that it would take this request under advisement (B.A. 6; 40).

At the next bargaining conference on December 4, Grieb presented to the Union representatives a list of the names of all the employees which also showed their job categories and dates of hire (B.A. 7; 41-42, 21-24). In addition, Grieb submitted a list containing the hourly wage rates paid by petitioner with the number of employees in each pay bracket (B.A. 7; 41-42, 25-26). Starnes immediately explained to Grieb that this data was inadequate for wage comparison purposes and that it did not show clearly the wage rates of the individual employee (B.A. 7; 41-42). Grieb replied that he believed the data was sufficient (B.A. 7; 42).

At subsequent meetings in January the Union, with the aid of information obtained through the North Carolina Department of Labor, pointed out that petitioner's average rate of pay appeared to be lower than the average of its competitors' (B.A. 7-8; 43-45). At the same time the Union renewed its request for the names, job classifications, rates of pay, and employment dates of each of the employees (B.A. 45). Petitioner persisted in its refusal to supply further data (B.A. 45).

When negotiations resumed in May, the Union reiterated its request for this information and also requested again that petitioner give it a financial statement covering the Charlotte operations. Petitioner refused to submit the financial statement. In response to the request for wage data petitioner supplied the Union with a document which divided

the plant into six labor groups, each with a wage range of from 11 to 13 cents, and showed the number of employees and their occupation in each wage group (B.A. 8-9; 46-48). The Union again protested that this information was inadequate in that it failed to indicate the wage rate for each employee, but petitioner again refused to supply the additional data (B.A. 9-10; 48).

B. The Board's conclusions and order

The Board, dividing 4-1, held that in failing to produce the wage data requested by the Union petitioner failed to fulfill its bargaining obligation under the Act. The Board noted that ample judicial precedent supported the view that the bargaining representative is entitled to receive from the employer "all wage information essential to the intelligent representation of the employees" including the names and individual wage rates of each employee in the unit (B.A. 28). Moreover, the majority specifically agreed with the concurring opinion of Chairman Farmer (B.A. 29, 32) that "the union [need not] show the precise relevancy of the requested information to particular current bargaining issues. It is enough * * * that the information relate to the wages or fringe benefits of the employees. Such information is obviously related to the bargaining process and the union is therefore entitled to ask and receive it." [2]

[2] Former Member Beeson dissented, agreeing with the trial examiner that the information here requested was not "essential to the Union's expressed purposes in the present case" (B.A. 34-35).

Accordingly, the Board entered a "limited remedial order" (B.A. 33) directing petitioner to cease and desist from the specific unfair labor practice, to furnish the Union upon request with a list of the individual wage rates of all employees in the unit, and to post an appropriate notice (B.A. 30-31).

C. The decision of the court below

The court below in a *per curiam* opinion observed that "It is well settled that . . . an employer [may not] refuse to furnish a bargaining union a list of the employees represented by it together with the wages paid them, as such information is necessary to the proper discharge of the duties of the bargaining agent" (*infra*, p. 13). Accordingly, the court enforced the Board's order, noting its agreement "with the Board that the union, as bargaining agent for the employees, was entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining . . ." (*infra*, p. 14).

ARGUMENT

The holding of the court below that an employer must furnish the statutory bargaining representative, on request, the individual wage rates of the employees it represents, is manifestly correct, accords with an unbroken line of judicial authorities,[3] and presents no question warranting review.

---

[3] *National Labor Relations Board* v. *Leland-Gifford Co.*, 200 F. 2d 620, 624 (C.A. 1); *National Labor Relations Board* v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947, 949 (C.A. 2); *National Labor Relations Board* v. *Hekman Furniture Co.*, 207 F. 2d 561, 562 (C.A. 6); *National Labor Relations Board*

Petitioner's primary contention (Pet. 8-9), that the information requested was not relevant to any current bargaining negotiations, rests on a misconception of the function of a bargaining representative. Such a representative, as the Board, with the approval of the court below, pointed out, is entitled to know the wage rates of the employees it represents so that it may have all the facts relevant not only to the instant contract negotiations but to other aspects of the bargaining relationship which may arise in the future, such as questions of merit increases, grievances, and the like. Moreover, even where individual wage rates do not bear directly on the matters at issue in the contract negotiations, the information contained therein may well suggest some field of compromise or other adjustment. Thus, for example, if the requested information had been supplied in this case, the Union might have withdrawn its request for a general wage increase, and have proposed instead the raising of wages for specific groups of employees.

---

v. *J. H. Allison & Co.*, 165 F. 2d 766 (C.A. 6), certiorari denied, 335 U.S. 814; *Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485, 487 (C.A. 7). See also *National Labor Relations Board* v. *Jacobs Mfg. Co.*, 196 F. 2d 680, 684 (C.A. 2); *National Labor Relations Board* v. *New Britain Machine Co.*, 210 F. 2d 61, 62 (C.A. 2); *National Labor Relations Board* v. *Otis Elevator Co.*, 208 F. 2d 176 (C.A. 2). *National Labor Relations Board* v. *Boston Herald-Traveler Corp.*, 210 F. 2d 134, 136-137 (C.A. 1), cited by petitioner (Pet. 12), is not to the contrary. In that case the court recognized that the Board could have validly ordered the employer to furnish the union with the individual salaries of the employees but it felt that the Board's order did not clearly so require and concluded that ambiguities in the order should be resolved against the Board which drafted it.

Petitioner's contention (Pet. 7-13) that the sole test is the employer's good faith in refusing the information is bottomed on the provision of Section 8(d) that the employer is not compelled to make concessions and on this Court's decision in *National Labor Relations Board* v. *American National Insurance Co.*, 343 U.S. 395. Both the statutory provision and the cited case, however, deal with "the substantive terms of collective bargaining agreements" (343 U.S. at 404, 408-409), whereas the instant case concerns not the terms of an agreement but the mechanics of the bargaining itself. An employer's good faith will not excuse his refusal to grant unqualified recognition to the statutory bargaining representative (*National Labor Relations Board* v. *Corsicana Cotton Mills*, 178 F. 2d 344, 346-347 (C.A. 5); *McQuay-Norris Mfg. Co.* v. *National Labor Relations Board*, 116 F. 2d 748, 751 (C.A. 7), certiorari denied, 313 U.S. 565), or a refusal to embody his agreement in writing (*Art Metals Const. Co.* v. *National Labor Relations Board*, 110 F. 2d 148, 150 (C.A. 2)). Similarly, the question here is not the employer's good faith, but whether his conduct impeded the statutory bargaining representative in the performance of its duties.[4]

---

[4] *National Labor Relations Board* v. *Jacobs Mfg. Co.*, 196 F. 2d 680 (C.A. 2), relied on by petitioner (Pet. 13), is not to the contrary. In that case the employer had refused the union's wage demand on grounds of inability to pay, and then refused the demand for the financial data on which he relied

Petitioner's suggestion (Pet. 13-14) that the Union, as "agent" of the employees, can get the wage information from its "principals" is answered by this Court's recent observation in *Brooks* v. *National Labor Relations Board*, 348 U.S. 96, 103, that "In placing a nonconsenting minority under the bargaining responsibility of an agency selected by a majority of the workers, Congress has discarded common-law doctrines of agency." Petitioner's argument that some employees may wish to withhold from the bargaining representative information as to their wage rates is, in fact, a further reason for requiring the employer to release the information. See *Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485, 487 (C.A. 7); *J. H. Allison & Co.*, 70 NLRB 377, 385, enforced, 165 F. 2d 766 (C.A. 6), certiorari denied, 335 U.S. 814; *Electric Auto-Lite Co.*, 89 NLRB 1192, 1198-1199; *Hekman Furniture Co.*, 101 NLRB 631, 639-640, enforced, 207 F. 2d 561, 562 (C.A. 6). Cf. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 332, 338-339.

---

in making his claim of inability. The Board ordered the employer to make available the financial data which "will substantiate [his] position in bargaining." 94 NLRB 1214 at 1226. The court of appeals, enforcing the Board's order, made it clear that the data need not prove the employer "right in his business decision as to what he can, or cannot, afford to do," but that he must furnish the data on which he in fact relied in making his claim of inability. 196 F. 2d at 684.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
FREDERICK U. REEL,
Attorney,
National Labor Relations Board.

MARCH, 1955.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6883

National Labor Relations Board,
Petitioner,

versus

Whitin Machine Works,
Respondent.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Argued November 18, 1954. Decided December 8, 1954.)

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

* * * * *

PER CURIAM:

This is a petition by the National Labor Relations Board to enforce an order directing the Whitin Machine Works to furnish the bargaining union representing its employees the individual wage rates of these employees. It appears that, in the course of negotiations with respondent, the union representing its employees asked this information and that respondent refused to furnish it, although it did furnish a list containing the names of all employees, their individual job categories and the dates on which they were hired. It also fur-

nished a list of the hourly wage rates paid at the plant, not showing, however, the individual wage rates of the individual employees, and a schedule of the existing rate ranges paid at the plant together with the number of employees within each rate range. The Board held that, notwithstanding the information furnished, it constituted a violation of section 8(a)(5) of the Act not to furnish the information requested. The Board said:

> "An examination of the wage information furnished by the respondent shows that from such information the union could not possibly determine what each individual employee it represented was earning.
>
> "We are convinced that the authority conferred by section 9(a) of the Act upon a union representing a majority of the employees in an appropriate unit entitles the union to all wage information essential to the intelligent representation of the employees and that when such information is reasonably available only from the employer's records, it is the employer's duty, on request, to accommodate the union. The courts have consistently agreed with this construction of the statute. In the instant case no showing has been made that compliance with the union's request would have placed an unwarranted and undue burden on the employer.
>
> "Refusal by an employer to supply such necessary information makes impossible the full development of the collective bargaining negotiations which the statute is intended to

achieve. It therefore constitutes a violation of section 8(a)(5) of the Act. This doctrine extends to a union's right to request and to receive from the employer the names of the employees in the appropriate unit together with their individual wage rates. Contrary to the suggestion of our dissenting colleague, the union in this case sought the names of individuals coupled with their wage rates not only to achieve a general wage increase but for the purposes of collective bargaining generally. In this respect, we agree with the statement of our concurring colleague, that in these cases it is sufficient that the information sought by the union is related to the issues involved in collective bargaining, and that no specific need as to a particular issue must be shown."

It is well settled that it is an unfair labor practice within the meaning of section 8(a)(5) of the Act for an employer to refuse to furnish a bargaining union a list of the employees represented by it together with the wages paid them, as such information is necessary to the proper discharge of the duties of the bargaining agent. *Aluminum Ore Co.* v. *N.L.R.B.*, 7 Cir. 131 F. 2d 485, 487; *N.L.R.B.* v. *Yawman & Erbe*, 2 Cir. 187 F. 2d 947, 948, 949; *N.L.R.B.* v. *Leland-Gifford Company*, 1 Cir. 200 F. 2d 620, 624; *N.L.R.B.* v. *Hekman Furniture Co.*, 6 Cir., 207 F. 2d 561, 562; *N.L.R.B.* v. *New Britain Machine Co.*, 2 Cir. 210 F. 2d 61, 62. It is argued that the information furnished here was sufficient for dealing with the existing controversy between

the parties as to a wage increase; but we agree with the Board that the union, as bargaining agent of the employees, was entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining and that such information should not necessarily be limited to that which would be pertinent to a particular existing controversy. At all events, this was a matter which Congress has committed to the jurisdiction of the Board. We may set aside the Board's action in such a matter only if it has acted without substantial evidence or has abused its discretion in the premises, which is manifestly not the case here.

The order of the Board will be enforced.

Order Enforced.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 556808 5179